

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 21-1733

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 6:30 p.m., December 20, 2021, to consider the application of **ROBERT MCLAUGHLIN** (“Applicant”). The Applicant is requesting a variance of the required 150-foot setback from a state highway (Md. Rte.404) to 116 feet, 4 inches so he may install an in-ground pool. The property is located at 30169 Pahlmans Way, Queen Anne, Maryland 21657 in the Agricultural Conservation (AC) zone. The property owners are the Applicant, Robert McLaughlin and Brittany McLaughlin. The request is made in accordance with Chapter 190 Zoning, Article II, §190-12.2.B.1 and Article VII, §190-58 of the Talbot County Code (“Code”).

Present at the hearing were Board of Appeals members Frank Cavanaugh, Chairman, Paul Shortall, Jr., Louis Dorsey, Jr., Zak Krebeck, and Jeffrey Adelman. The Applicant attended the hearing in support of his application. County employees Elisa Deflaux, Planner II, and Chris Corkell, Secretary to the Board of Appeals were also present at the hearing. Glenn D. Klakring was the attorney for the Board of Appeals.

Mr. Cavanaugh noted for the record that each of the members of the Board had visited the site.

The following documents are in the case file are part of the record and are identified as Board’s Exhibits as indicated:

1. Application for variance.
2. Copy of a portion of the Talbot County tax map with the property highlighted.
3. Appeals Notice of Public Hearing.
4. Certificate of publication of the Notice of Public Hearing from the *Star-Democrat*.

5. Notice of hearing with a list of nearby property owners attached.
6. Copy of variance requirements from the Code with the Applicant's response to each applicable requirement attached.
7. Staff Report.
8. Sign maintenance agreement.
9. State Highway Commission, Maryland Department of Transportation, (MDOT) dated 12/16/2021. The email states that MDOT has no concerns or issues with the Application.
10. Independent Procedures Disclosure and Acknowledgement Form.
11. Aerial photographs of the subject property and surrounding areas.
12. Site plan by Stephen H. Jupitz, Inc.
13. Pool plans.

Chris Conley, General Manager, Coastal Pools, 6608 Ocean Gateway, Queenstown, Maryland, testified in support of the application. (Coastal Pools is the contractor for the proposed pool.) He said that the planned pool is a small, 700 square foot, in-ground pool. The proposed location is as close to the back of the Applicant's house and away from Rt. 404 as possible. The property has a large side yard, but that area is encumbered by a septic reserve area and cannot be used. There also is a barrier wall and berm along the back of the property screening the back yard from Rt. 404.

Mr. Conley said that all eight other residential properties in the same community have pools. He said that he did a Google Earth search and found two other residential properties in the area that have pools that are closer to Rt. 404 than the Applicant's proposed pool.

Mr. Cavanaugh commented that the Applicant's back yard seems to be smaller than those of the other lots in the community. He asked about two in-ground pipes on a side of the house. Mr. Conley said

they were either part of a septic system and/or an underground fuel tank. They also limited the possible locations for a pool.

Mr. Cavanaugh then reviewed the variance requirements on the record. He noted that the State Highway Administration is not opposed to the application. He also observed that no one appeared at the hearing to oppose the application.

Mr. Shortall stated that he felt the applicant had met the standards for the requested variance.

Mr. Krebeck said that the property is unique and that the 150-foot state highway setback imposes a substantial impact on it. He also observed that the proposed encroachment into the setback is minimal. He said he supports granting the variance.

Mr. Dorsey asked about the dimensions of the pool. Mr. Conley explained that three-foot wide pavers will surround most of the pool. There will be a wider area of pavers between the pool and the house for lounge chairs. He said the distance from the highway included the pavers.

Mr. Cavanaugh then commented that the property is unique and that the wall and berm limited any impact the pool might have.

Elisa Deflaux stated that the widening of Rt. 404 by the State also impacted the property.

There being no further evidence the Board considered the application.

After discussion and upon motion duly made and seconded, the Board made the following findings of fact and law:

1. All legal requirements pertaining to a public meeting were met.
2. Certain unique physical characteristics exist, such as unusual size or shape of the property or extraordinary topographical conditions, such that a literal enforcement of the provisions of the Code would result in practical difficulty or unreasonable hardship in enabling the Applicant to develop the property. The 150-foot state highway setback

impacts a large portion of the Applicant's back yard. Applicants' dwelling was built at an angle and relatively close to the state highway property line. Other factors limit the Applicant's ability to use the remaining portions of his property outside the setback. The barrier wall and berm between the property and Rt. 404 limit the impact of the proposed variance.

3. The granting of the variance is not based upon circumstances which are self-created or self-imposed. There is no evidence that the Applicant created the hardship that would otherwise prohibit him from installing a modest pool for his family's enjoyment.
4. The Board did not consider greater profitability or lack of knowledge of the restrictions as sufficient cause for the variance.
5. The granting of the variance will not be contrary to the public interest and will not be a detriment to adjacent or neighboring properties. The proposed pool is behind the home, a normal placement for a residential in-ground pool. Also, a barrier wall and berm screen the pool location from Rt. 404.
6. The variance does not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship. The Applicant is proposing a modestly sized pool and located it as far from the state highway as reasonably possible.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS,

RESOLVED that the Applicant, **ROBERT MCLAUGHLIN** (Appeal No. 21-1733) is **GRANTED** the requested variance consistent with the evidence provided the Board of Appeals and subject to the conditions suggested by the County staff, namely:

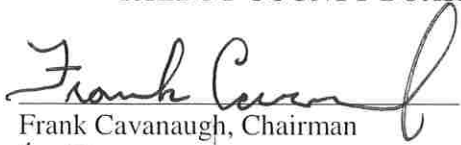
1. The Applicant shall commence construction of the proposed improvements within eighteen (18) months of the date of this approval as set forth below.

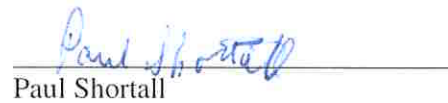
2. The pool and patio shall be no larger than proposed on the site plan presented to the Board.

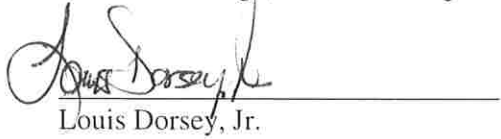
The vote of the Board was five to zero to grant the variance.

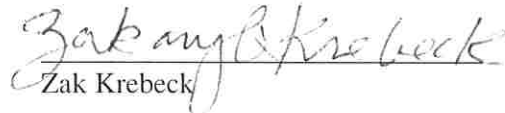
GIVEN OVER OUR HANDS, this 25th day of January, 2022.

TALBOT COUNTY BOARD OF APPEALS


Frank Cavanaugh, Chairman


Paul Shortall


Louis Dorsey, Jr.


Zak Krebeck


Jeffrey Adelman